

SERVED: May 3, 1993

NTSB Order No. EA-3876

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of April, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13017
v.)	
)	
GUY HAMILTON JONES, JR.,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent, acting pro se,¹ has appealed from the oral initial decision issued by Administrative Law Judge William R. Mullins at the conclusion of a hearing held in this case on March 24, 1993.² In that decision the law judge upheld the

¹ Respondent is an attorney licensed to practice in the state of Arkansas.

² Attached is an excerpt from the hearing transcript containing the oral initial decision.

Administrator's emergency order suspending respondent's private pilot certificate until such time as he complies with the Administrator's request that he present his pilot logbook for inspection pursuant to 14 C.F.R. 61.51(d).³

Respondent does not dispute that he has failed to provide his pilot logbook to the FAA in response to repeated requests from FAA aviation safety inspectors that he present that logbook for inspection. (See Exhibits A-1 through A-8.)⁴ However, he maintains that his refusal is justified by his assertion of his privilege against self-incrimination under the Fifth Amendment of the U.S. Constitution. Respondent claims that he will comply with the FAA's request if he is granted "use immunity or other immunity to preclude the use of pilot logs and records for any criminal proceeding." (App. Br. at 6.)

³ Section 61.51(d) provides, in pertinent part:

§ 61.51 Pilot logbooks.

(d) Presentation of logbook. (1) A pilot must present his logbook (or other record required by this section) for inspection upon reasonable request by the Administrator, an authorized representative of the National Transportation Safety Board, or any State or local law enforcement officer.

⁴ The FAA's original request, dated December 29, 1992, was precipitated by a controller's report that on December 27 an aircraft (later revealed to be registered to respondent) had operated out of Greenwood-Lefflore County Airport, Greenwood, Mississippi, at night, during instrument meteorological conditions without an appropriate clearance, and without operation of the required position lights. (See Exhibit A-1.) When he was questioned by an FAA inspector as to whether he was the pilot in command of the subject flight, respondent refused to answer, citing his Fifth Amendment privilege against self-incrimination and the existence of a criminal investigation into the same incident. (Tr. 32.)

Respondent apparently believes that he is the subject of ongoing investigations by the United States Customs Service and/or the Arkansas State Police into potential criminal violations regarding drug trafficking, illegal aircraft registration, and operation of an aircraft without required navigation and anti-collision lights. (Tr. 58-9; App. Br. at 5, 7, 16.) The law judge precluded respondent from presenting evidence on this point, stating that he would assume for the purpose of his decision that respondent was indeed under criminal investigation. (Tr. 16, 19.) The law judge concluded that, even assuming the existence of such an investigation, the Fifth Amendment could not excuse respondent's failure to provide his pilot logbook pursuant to section 61.51(d). He held that, under our decision in Administrator v. Weinstein, NTSB Order No. EA-3675 (1992), the Administrator has an "absolute right" to review respondent's logbook, so long as his request is reasonable. (Tr. 15, 16, 75, 79.) We agree.

In Weinstein at 5, we held that a request for logbooks pursuant to section 61.51(d) must be honored so long as the request itself is made in a reasonable manner, "in the sense that compliance presents no undue or inappropriate burden." Respondent has not shown how, and indeed does not even argue that, compliance with the Administrator's requests to inspect his pilot logbook would cause him to be burdened or inconvenienced in any way. Accordingly, we hold that the Administrator's requests

were reasonable within the meaning of section 61.51(d).⁵

To the extent that respondent's argument (that he need not comply with section 61.51(d) because to do so would violate his Fifth Amendment right against self-incrimination) can be read as a challenge to the constitutionality of that regulation or of its application to respondent in this case, it is well-established that the Board has no authority or jurisdiction over such challenges.⁶ We note, however, that there is a widely-recognized exception to the Fifth Amendment privilege against self-incrimination for records which are required by law to be kept.⁷

Respondent does not deny that his pilot logbook is such a record. (See Tr. 12, 57.) Indeed, as we made clear in Weinstein at 6, persons making entries in pilot logbooks can have no legitimate expectation that those entries will be protected from public disclosure in light of the presentation requirement of

⁵ As in Weinstein, we also believe that the event which precipitated the logbook request (in this case the incident involving respondent's aircraft on December 27, 1992) provided adequate and reasonable justification for that request. But we reaffirm our holding that the Administrator need not offer any justification as to "why he wants or should be permitted to see the logbooks . . . he is authorized to review under [a] regulation[] that impose[s] no restrictions related to his motives." Id. at 4-5.

⁶ Administrator v. Ewing, 1 NTSB 1192, 1194 (1971) (Board has no authority to pass on reasonableness or validity of FAA regulations); Administrator v. Boardman, NTSB Order No. EA-3523 at 10 (1992) (Board lacks authority to rule on constitutional validity of regulations promulgated by the Administrator); Watson v. NTSB, 513 F.2d 1081, 1082 (9th Cir. 1975) (NTSB does not have jurisdiction over challenges to FAA regulations of general application).

⁷ See cases digested at U.S.C.A. Const. Amend. 5, Self-Incrimination, Note 422.

section 61.51(d).⁸

In sum, we conclude that the Administrator's requests to view respondent's pilot log book were reasonable, and respondent's refusal to comply with those requests constitutes a continuing violation of section 61.51(d) which cannot be excused by his assertion of Fifth Amendment rights.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The initial decision upholding the Administrator's emergency order of suspension is affirmed.⁹

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁸ This is not to say that the Fifth Amendment privilege against self-incrimination has no place at all in our administrative proceedings. As was recognized in Roach v. NTSB, 804 F.2d 1147, 1151 (10th Cir. 1986), under appropriate circumstances a witness sworn to testify at a hearing may assert the privilege in response to individual questions which might incriminate him in future criminal proceedings.

⁹ Respondent's Motion for Interim Relief, requesting return of his pilot privileges during the pendency of his appeal to the Board and any eventual appeal to a Court of Appeals, is denied. The Board has no authority to stay the effectiveness of the Administrator's emergency order. See 49 U.S.C. 1429(a).